IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 510 OF 2006

Jagan Dashrath Shinde. .. Petitioner.

vs.

The State of Maharashtra
(Nalasopara Police Station)
& Ors. .. Respondents.

Shri Shirish Gupte with P.G. Kathane
i/by Kuldeep S. Patil for Petitioner.
Shri S.R. Borulkar, PP., with Smt. U.V. Kejriwal
for Respondents.

CORAM : J.N. PATEL, AND
SMT. ROSHAN DALVI, JJ.
DATE : 20th September, 2006.

P.C.

. Heard.

2. We are constrained to pass an order on 11.9.2006 directing summons to be issued to

Superintendent of Police, Rural (Thane). Pursuant to the summons issued by this Court, the Superintendent of Police, Rural (Thane) is present before this Court and an affidavit in reply is also filed of Shri Sharad H. Ugale, Police Inspector at present attached to Nalasopara Police Station, Thane (Rural), Dist. Thane.

3. The matter relates to investigation of Crime No. 226/2003 under which offences under sections 302, 307, 120-B, 465, 467, 468, 471, 474 of IPC and under section 3 read with 25(1-b)(a), 27 of the Arms Act registered with Nalasopara Police Station on 25.10.2003 and the investigation stands transferred to the Local Crime Branch, Thane (Rural).

4. In the affidavit in reply it has been specifically stated that in the course of investigation, complicity of the petitioner is prima facie made out but the petitioner is not available inspite of this Court’s order.

5. Mr. Shirish Gupte, the learned Senior Advocate, submits that the petitioner is very much available but the police has not interrogated him. We expect that the investigation in the matter should be conducted expeditiously as any further delay would lead to non-availability of the material evidence. The respondents have put certain persons

on trial in the said case but they have been acquitted and the appeal against the acquittal is admitted by this Court. The petitioner along with others are wanted in the said case. In view of the fact that the offence in which the petitioner is wanted along with other suspects is of serious nature which can be seen from the offence registered in Crime No. 226 / 2003, this Court should not interfere in the investigation of the case. In so far as the availability of the suspects is concerned, it is for the investigating agency to trace them and if they are found to be absconding, resort to the procedure laid down in the Code of Criminal Procedure for procuring their presence. We find no merit in the petition. Petition is dismissed.

6. Needless to say that as this Court has dismissed the petition, the concerned officers now need not report to this Court.

7. Mr. Shirish Gupte, the learned Senior Advocate submits that he was not heard in the matter on merits before this Court proceeded to pass the order dismissing the petition. The matter has been heard from time to time and this Court has passed a specific order directing the petitioner to make himself available for interrogation by the Investigating Officer which he failed to comply and,

therefore, considering the affidavit in reply we are satisfied that in such cases it is better that the investigating agency is given a free hand to investigate the case and it is settled law that it is only in exceptional cases that the Court should interfere in investigation and quash FIR.

8. In fact, in the case of Trisuns Chemical Industry V/s. Rajesh Agarwal and others (1999) 8 SCC 686 in a case of cheating despite a civil dispute having been pending and arbitration proceedings having been initiated and despite the territorial jurisdiction of the Magistrate having been challenged, it was held that the complaint could not be quashed and such an order shall be limited to very extreme exceptions.

9. Further in the case of M. L. Bhatt v/s. M.K. Pandita & Ors. JT 2002 (3) SC 89 it was held that the Court is not justified in quashing an FIR by appreciating and sifting the materials collected during investigation. Having, therefore, gone through the FIR, we do not propose to go into the merits of the Petitioner's case.

10. Further in the recent decision of the Apex Court in the case of Ram Biraji Devi & Anr. v/s. Umesh Kumar Singh & Anr. 2006 ALL M R (Cri) 2402 (S.C.) following the decision in the case of Trishum

Chemical Industry (supra) it was confirmed that the High Court can quash a complaint only in extreme exceptions. In that case on a perusal of the complaint a civil dispute alone was noticed and no offence was disclosed and hence that complaint came to be quashed. In this case a perusal of the complaint, which is alone sufficient, shows that a serious offence is disclosed, which needs investigation. Besides, we do not find any exceptional case made out in the petition.

11. As such any submission on behalf of the petitioner is not going to make any difference in the matter and that is why we felt it proper not to hear the learned counsel appearing for the petitioner on merits as the petition stands disposed of at the stage of admission itself.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)